[redacted]

9165/1

The Honorable Amos J. Peaslee
Ambassador and Deputy Special
Assistant to the President
The White House
Washington 25, D. C.

Dear Amos:

I have received the copy of your memorandum to President Eisenhower on "International Law and Organizations" which Gerry Morgan sent me at your request.

It was very thoughtful of you to have this brought to my attention. I have looked it over and I have taken the liberty of forwarding it to some of my experts here for their information and a further study.

With kindest personal regards.

Sincerely,

Allen W. Dulles
Director

25X1 O/DCI [redacted] bak(18 Nov. 59)

Distribution:
Orig&1- Addressee
1 - DCI
25X1 1 - Mr. [redacted] ONE w/basic & encl. for comment
1 - AAB
1 - ER

NOV 30 3 33 PM '59 NOV 23 10 12 AM '59

White House

65
ER 11-9126a

Mr. Gerald D. Morgan
The Deputy Assistant to the President
The White House
Washington 25, D. C.

Dear Gerry:

It was good of you to send me a copy of Amos Peaslee's memorandum which he wrote to President Eisenhower on "International Law and Organizations."

I have looked it over and I have taken the liberty of forwarding it to some of my experts here for their information and a further study.

With kindest personal regards.

Sincerely,

Allen W. Dulles
Director

25X1 O/DCI/[redacted]:bak(18 Nov. 59)

Distribution:
Orig.&1 - Addressee
1 - DCI
25X1 1 - Mr. [redacted] ONE w/basic & encls. for comment
1 - AAB
1 - ER

THE WHITE HOUSE

WASHINGTON

November 16, 1959

Dear Allen:

Amos Peaslee asked me to pass along to you a copy of his memorandum to the President on the subject of International Law and Organizations. It is enclosed herewith.

Sincerely,

Gerald D. Morgan
The Deputy Assistant to the President

The Honorable Allen W. Dulles
Director
Central Intelligence Agency
Washington, D. C.

November 6th, 1959

To: The President
From: Ambassador Peaslee
Subject: "International Law and Organizations"[1]

Summary

Your efforts "to the end that the rule of law may replace the rule of force in the affairs of nations"[2] are achieving impressive success. You brought to a conclusion one costly war. How many you have averted no one will ever know.

This memorandum relates to possible further progress during the remaining 14 months of the Administration's life.

(1) The Administration should exert leadership toward the review and revision of the United Nations Charter;

(2) It should reassert its support of the expansion and improvement of World Law and International Courts, including the repeal of the "Connally Amendment";

(3) It should achieve a "Disarmament" Treaty, though progress is more likely to proceed in the direction of devoting force to the maintenance of law, order and justice, and in limiting the legally permissible areas of self defense, rather than through efforts to prohibit the maintenance of national arms.

1 Your letter to me of June 13, 1958
2 Your State of the Union Message of January 9, 1959

#2

I

United Nations Charter Review and Revision

In 1945 when the Charter of the United Nations was signed at San Francisco a clause was inserted contemplating a review and probably some revision of the Charter at the end of a ten year trial period.

The ten year period was concluded in 1955. John Foster Dulles, as Secretary of State, announced early in August 1953 that the United States would favor the calling of a review conference. It did that, but no such conference has yet been called.

The Committee of the Whole established to consider the "question of fixing the time and place" of a Charter review conference was directed to report again to the 14th General Assembly this autumn. In recommending to the 12th General Assembly that a decision on the time and place of the conference be deferred, the Committee took the position that the "appropriate time" and "auspicious international circumstances" referred to in the 10th General Assembly resolution "have not yet materialized". Meanwhile the Secretariat of the United Nations has prepared an excellent "Reportory of the United Nations" to facilitate the labors of such a review conference when and if it is held.

There are many arguments both for and against efforts to amend the United Nations Charter. On balance I favor such an effort. The Eisenhower Administration should in my judgment continue to identify itself during the remaining 14 months of its life with bold

forward-facing support of improved mechanics for the maintenance of the world's public peace.

You will know better than I what Foster Dulles's final thinking was on this subject. I served on various lawyers' committees with him when we were both practicing law. I also had correspondence with him about the proposed Charter Review Conference when I was our Ambassador to Australia in 1953 and 1954. He had some doubts then whether a strong bi-partisan United States Delegation could be assembled for the task. However, many of the things which he wanted done would require Charter amendments. I believe that he desired to take the lead in such an effort if he could be certain of reasonable Congressional support. In his address before the General Assembly of the National Council of Churches of the United States of America on December 11, 1952, he said:

> "The United Nations is a beginning. It is inadequate and faulty as all great beginnings are. There are few substitutes for learning by trial and error. There has been trial..... The lesson is to persevere.
>
> There will probably be a general meeting of the members to review the United Nations Charter in 1955. That meeting corresponds in importance with the original San Francisco Conference of 1945".

Certainly that statement indicates that at that time, 1952, he did favor Charter revision.

Charter revision is tied in almost inextricably with the problems of clarifying and expanding the jurisdiction of the World Court, of declaring and changing international law, of rationalizing the

voting procedures, of the maintenance of forces to protect the international public peace, of delimiting the powers of the United Nations, and of protecting rights which should be reserved to nations and individuals.

A really thorough job of desirable Charter revision, in the light of its first thirteen years of operation, should result in the following amendments:

(1) There should be an enumeration of the powers intended to be conferred upon the United Nations by the member nations, and a statement that the United Nations possesses no other powers.

(2) There should be an enumeration of the rights of nations and of real human rights which may not be infringed by the United Nations or its officials. Until and unless that is done it is doubtful that the members will or should confer upon the United Nations the powers which it should possess. Discussions of "human rights" during the past years in United Nations organs, have been devoted to moral aspirations and political platforms, rather than real "rights" enforceable in a court of law.

(3) Authority should be given to a deliberative body or bodies of the United Nations to declare what is international law and to modify it from time to time ("peaceful change"). That function might be assigned either to the General Assembly alone, if a reasonably satisfactory voting formula can be devised for it; or, if not, then to the General Assembly and the Security Council acting bi-camerally.

(4) The function of dealing with specific disputes between nations should be lifted completely out of the General Assembly and the Security Council, and vested in the judicial organs of the United Nations. Unquestionably there are some disputes which are political and not resolvable by a court of law. But a transfer to the World Court of general jurisdiction over international disputes, excepting only those over which the World Court rejects jurisdiction on the ground that they are political in nature, would vastly increase the prospects of permanent success of the United Nations.

(5) The exercise of executive functions of the United Nations should be restricted to action only in accordance with law and decisions already arrived at by the deliberative or judicial organs.

(6) The International Court of Justice should be supplemented by a complete "system of interrelated permanent international courts with obligatory jurisdiction", in accordance with recommendations which were made over 15 years ago by the American Bar Association and other principal Bar Associations of the United States.

(7) Acceptance of uniform jurisdiction of courts of the United Nations should be an automatic obligation of membership in the United Nations.

(8) You may also wish to consider the advisability of directing a study of the possibility of creating a single uniform, hard based convertible currency. Inflation is the number two danger to modern civilization. It is doubtful that it can be stopped short of

sweeping joint international action.

Some of the witnesses before the Sub-Committee of the Committee on Foreign Relations which dealt with the subject of U. N. Charter revision in 1955 expressed the fear that amendments to give the United Nations more power might convert it into a "World State", or a "World Government" in violation of our constitutional processes.

The Senate Committee replied to this quite properly that "amendments to the Charter come into force only after they have been initially approved by a two-thirds vote of the member states of the General Assembly and subsequently ratified in accordance with their respective constitutional processes by two-thirds of the members of the United Nations, including all the permanent members of the Security Council".

Whether desirable Charter amendments would require also an amendment of our Constitution would depend on the precise changes proposed. In general, I have always thought that both the advocates and the opponents of so-called "World Government" are agitated about something which already exists. There are now in operation about 115 institutions set up by treaties and other intergovernmental agreements which are known by the name "International Governmental Organizations". Their activities include "agriculture", "arbitrations", "customs", "defense", "economic development", "education", "executive power", "finance", "highways", "immigration", "Indian life", "judicial powers", "labor", "legal and legislative matters", "marine life",

"meteorological observations", "migration", "money", "navigation", "patents", "peace and security", "postal service", "protection of children and mothers", "sanitation", "social development", "statistics", "technical cooperation", "telecommunications service", "trademarks" and "weights and measures".

Are not these activities in fields which we ordinarily associate with the idea of "government"?

Whether these already existing organizations partake of the nature of a "world government" and whether they already limit "national sovereignty" I would not attempt to say. What I would like to see is more of the good ones and a few less of the superfluous ones. But I would not let a fear of the labels on the packages interfere with setting up in the international field adequate organs to preserve the public peace and to accomplish international justice and order.

I would like to see this Administration take bold leadership in advocating whatever amendments are necessary to the United Nations Charter to enable that organization to do its job.

A great Republican Secretary of State, the Honorable Charles Evans Hughes, once said - "The building of the institutions of peace is the most distinctive enterprise of our time. The difficulties do not make the task any the less the supreme task of modern civilization. We shall have to build and rebuild and then, mayhap, to build again, but ehe construction process must go on".

The United Nations has been rightly described by the International Court of Justice as "at present the supreme type of international organization". It is a fine deliberative forum. It is a useful face-saver. It is one of the greatest hopes of the future of humanity. It is not as fragile as some fear.

The architects of the United Nations have told us frankly, however, that the present Charter was designed for a world in which agreement among the powers permanently represented in the Security Council would ordinarily prevail. That situation does not now exist. Surely there should be no flinching from an effort to adapt the Charter to the new demands.

The United States should therefore lead in calling a Charter Review Conference, and in advocating some revision of the Charter.

II

World Law and International Courts

When the United States in 1946 accepted the "optional" clause (Art. 36) of the Statute of the International Court of Justice regarding that Court's jurisdiction, the Senate excluded from the Court's jurisdiction as far as the United States is concerned "matters which are essentially within the domestic jurisdiction of the United States of America". That exclusion was unobjectionable. But in a last minute amendment sponsored by Senator Connally, the Senate also inserted a clause stating that the question as to what constitutes a "domestic jurisdiction" shall be "determined by the United States of America".

That clause had not been in the proposed Senate Resolution as recommended by the Foreign Relations Committee. It was contrary to recommendations of the American Bar Association and other leading Law Societies. It savored too much of insisting upon being the judge of our own cause.

Six other nations have followed our example and inserted similar clauses in their acceptance of the Court's jurisdiction. Still more have employed other language destructive of the Court's proper powers.

In practice those reservations have been mischievous and self-defeating. They threaten even to boomerang against the interests of the nations employing them.

France, one of the nations which had originally followed our example, reversed its position on July 10, 1959 and struck out the clause. The United States should strike it out also. In retrospect it seems somewhat regrettable that the Administration did not take the initiative in recommending this repeal to the Congress. Attorney General Brownell had suggested it in his speech at London in 1957. People all over the world are very conscious of the present inadequacy of machinery for achieving international justice and peace.

It was not malice or a desire to obstruct justice, however, which caused Senator Connally to propose that amendment. His fears stemmed from a defect in the United Nations Charter which should be corrected. The Charter, as noted above, fails to contain any enumertion of the rights and powers of the member nations which may not be impinged by the United Nations. Until such a "bill of rights" is

incorporated in the United Nations Charter there will continue to be a certain amount of justifiable reluctance to confer upon the United Nations the powers which it should have.

What should be done by amendment of the Charter is to (a) incorporate in the Charter a "bill of rights" assuring to all member nations the reservation of their own rights, (b) strike out entirely the "optional" provisions which make it possible for any nation to defeat the Court's jurisdiction by making itself the judge of its own cause, and (c) specify that obligatory jurisdiction over certain kinds of disputes, to be named in the Charter, is a necessary incident of membership in the United Nations.

Our own Federal Constitution, you will remember, originally suffered from a similar defect. It was signed and went into effect without containing a bill of rights. James Mason, of Virginia, refused to sign it because of that omission. The omission was later corrected by the adoption of the first ten amendments to our Constitution. The United Nations Charter should be similarly amended.

The Connally Amendment should be repealed, however, without waiting for that. The jurisdiction of the Court for nations accepting Article 36 is quite restricted anyway, without necessity for adding the objectionable words "as determined by the United States of America". Jurisdiction is limited to:

> "legal disputes concerning:
> a. the interpretation of a treaty;
> b. any question of international law;
> c. the existence of any fact which, if established, would constitute a breach of an international obligation;

d. the nature or extent of the reparation to be made for the breach of an international obligation"

The Charter amendment which is needed, is to grant to the Court jurisdiction over all disputes which fall into those four categories, but to eliminate the option now contained in Article 36 permitting any member of the United Nations to stay outside of that obligation if it so desires.

It is of course possible that the Soviet Union would leave the United Nations if forced to face acceptance of automatic jurisdiction as an obligation of all members. If the Soviet Union would walk out rather than join other nations in risking reference to the World Court of all disputes within the limited areas now provided in the Charter for optional "obligatory" jurisdiction, I think I would be inclined to find that out.

A decision by the Eisenhower Administration to go the whole way and favor revision of the Court Statute to accomplish this would be more useful than a decision merely to repeal the Connally Amendment. It might even be less difficult to defend, because it would result in far wider benefits.

The results of continuing at San Francisco the optional clause have been most unfortunate. Less than half of the present members of the United Nations have accepted the "optional" "obligatory" jurisdiction. Such acceptances as exist have been accompanied with all sorts of exceptions.

It seems reasonably probable that few, if any nations, with the exception of the Soviet bloc, would oppose "obligatory" juris-

diction if they were sure that all other member nations would be subject to the same requirements. But as it is, a tangled web has been spun. It is backfiring against the interests of all members of the United Nations.

III

"Disarmament"

A "Disarmament" Treaty with the U.S.S.R. is feasible and desirable.

Much spade work respecting the language of a mutually acceptable "Disarmament" Treaty was done in 1956 and 1957. A good bit of draft language had been approved by the President's special interdepartmental committee which existed at that time. No doubt much more has since been done. If the conferees will concentrate on specific treaty language an acceptable document can, I believe, be concluded.

The path of genuine progress is unlikely, however, to follow exhortations to disarm completely. Real progress will proceed in the direction of devoting force to the maintenance of law, order and justice, and in defining and limiting the occasions when self defense is legally permissible. Force for those purposes we should support.

The word "Disarmament" for such treaty as may be possible, will be to some extent a misnomer. An effort to impose prohibitions and limitations upon national arms is unlikely to be successful. The Constitution of the United States did not compel the 13 Colonies to abolish all their arms. Congress would expressly author-

ized "a well regulated militia", and said that "the right of the people to keep and bear arms shall not be infringed". Almost every state in our Union has a penal code which expressly authorizes self defense and defines the occasions on which it may be employed.

We might consider consecrating the use of our foreign bases under U.N. guidance for the maintenance of international law, order and justice, provided necessary changes in the U.N. setup are brought about; but we should not repeat the error of Article X of the Covenant of the League of Nations nor the error of the "Virginia Plan" in our own Constitutional Convention of 1787 which Alexander Hamilton's opposition fortunately induced James Madison to modify.

Conclusions

I therefore recommend:

1. That the Eisenhower Administration during the remaining 14 months of its existence continue to identify itself with bold forward-facing policies "to the end that the rule of law may replace the rule of force in the affairs of nations", as promised in your State of the Union Message of January 9, 1959.

2. That the Administration exert leadership toward the review and revision of the United Nations Charter.

3. That the Administration reassert its support of the expansion and improvement of World Law and International Courts including the repeal of the "Connally Amendment".

4. That the Admin istration achieve a "Disarmament" Treaty

covering the testing of nuclear weapons and such other matters as can be agreed upon, though mindful of the lessons of experience that real progress is more likely to lie in the direction of devoting force to the maintenance of law, order and justice, and in defining the occasions when self defense is legally permissible.

Finally, since you are the world's most famous optimist, may I commend to you the remark of C. Wilfred Jenks at the last annual meeting of the American Society of International Law, who said: "The born pessimist who attempts to reconcile us to his pessimism by calling it realism will achieve nothing, and may ultimately be taken aback by what the optimists have quietly accomplished while he has been explaining why it is impossible".

AMOS J. PEASLEE
Ambassador and Deputy Special
Assistant to the President

30 NOV 59

CENTRAL INTELLIGENCE AGENCY
WASHINGTON 25, D. C.

Executive Registry
16-9165/A

November 24, 1959

MEMORANDUM

TO : Mr. Allen Dulles

FROM : [redacted] 25X1

SUBJECT : Ambassador Peaslee's Memo to the President on "International Law and Organization."

With reference to your request for comment on Ambassador Peaslee's recent memo to the President, I submit the following comment divided in accordance with the 3 part organization of his memo. In a word, I find Ambassador Peaslee to be well motivated but unrealistic.

I. UN Charter Review and Revision

1. The memo points out that the UN Committee appointed to consider the question of Charter review recommended in 1957 that such a decision be deferred because "auspicious international circumstances have not yet materialized". Nevertheless, Ambassador Peaslee on balance favors such a review (p.2). My own feeling is that the Committee's dictum still holds true - but that there is the possibility that in 1965, at the UN 29th anniversary, international circumstances might be such that a review might be advantageous.

2. The amendments which Ambassador Peaslee seems to be suggesting are so far-reaching as to constitute a transformation of the present UN into a world government patterned largely after the US structure of government. In other words, if these were accepted, my feeling is that the shrimp would have to have learned how to whistle. Ambassador Peaslee, however, seems to think that the shrimp may not know it but he

has gone a long way toward learning how to whistle. He says "In general, I have always thought that both the advocates and the opponents of so-called 'World Government' are agitated about something which already exists". (p.6)

II. World Law and International Courts

1. Ambassador Peaslee is unhappy about the 1946 Connolly amendment which stipulated that the US should be the one who determines which matters are within the domestic jurisdiction of the US and thus are excluded from the World Court's jurisdiction. It is "regrettable" to him that this "Administration did not take the initiative in recommending this repeal to the Congress". (p.9). My comment is that I cannot imagine this Senate or any foreseeable US Senate permitting somebody else to decide what lies within US domestic jurisdiction.

2. Ambassador Peaslee's other remedy for the Connolly amendment is to repeat what he has already recommended in Section I - a UN Bill of Rights and World Court "obligatory jurisdiction" over certain kinds of disputes (p.10). Added to these, he would eliminate the option that permits any member of the UN to remain outside the Court's present jurisdiction. Again, he asks for the impossible - at least at this time. Even he admits that the Soviet Bloc would oppose this (p.11).

III. Disarmament

1. Ambassador Peaslee believes, and I would agree, that the "path of genuine progress is unlikely, however, to follow exhortations to disarm completely". (p.12). I would disagree, however, that "real progress" lies along the path at this time of applying force to the maintenance of law.

2. While he seems to favor a treaty on the suspension of tests and "such other matters as can be agreed upon" (p.14), he, at the same time, takes the position that "an effort to impose prohibitions and limitations upon national arms is unlikely to be successful" (p.12). I disagree.